it asks that a deed be canceled as having been procured by fraud, and that, in case it is found to be valid, plaintiff may recover the contract price, and have a vendor's lien. Humphrey *v.* Ringler, 94 Iowa 182, 62 N. W. 685.

If an original and an amended bill in equity allege repugnant grounds for relief, the bill as amended is demurrable. Winter *v.* Quarles, 43 Ala. 692. See, also, Magnetic Ore Co. *v.* Marbury Lumber Co., 113 Ala. 306.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

SELDEN et ux. *v.* WILLIAMS et al.

Sept. 10, 1908.

[62 S. E. 380.]

1. Judgments—Assignment—Rights of Assignee.—The recovery by the payee of judgment on a note against the maker destroys its further negotiability, and the judgment is not a nonnegotiable chose in action, the assignee taking it subject to all the equities of the debtor against the assignors existing at the date of the assignment or which arise after the assignment and before the debtor has notice thereof, even though the assignee takes the assignment for value, bona fide, and without notice of the equity.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 30, Judgment, §§ 1556-1558.]

2. Assignments—Rights of Assignee.—The assignee of a nonnegotiable obligation can take no rights which his assignor did not possess, and can generally make no defense he could not make.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 4, Assignments, §§ 162-165.]

3. Judgment—Assignment—Defenses against Assignee—Estoppel.—Where the payee of a note deposited it with a bank as collateral security for a loan less than the amount of the note, and thereafter the bank recovered judgment against the makers for the face value, the makers, after paying the debt for which the note was deposited as collateral, were not estopped by their failure to defend a chancery suit by the bank to subject certain property of the makers to the lien of the judgment from setting up any equities they had against the judgment in a suit thereon by the assignee thereof.

4. Same.—Code 1904, § 3299, provides that, in an action on a contract, defendant may file a plea alleging any such failure in the

consideration of the contract, etc., or any other matter as would entitle him to relief in equity, etc. Section 3300 provides that, if defendant shall not tender such plea, he shall not be precluded from such relief in equity as he would have been entitled to if the preceding section had not been enacted. Held, that the failure of the makers of a past-due negotiable note, the consideration for which had failed and which was held as collateral for a debt of the pledgor for a less amount than the face of the note, to defend an action at law on the note by the pledgee wherein a judgment against them was obtained, or to defend scire facias proceedings to revive the judgment, did not preclude them from setting up equities against the enforcement of the judgment in proceedings by the assignee thereof.

5. Assignments—Defenses against Assignee—Equities between Original Parties.—The rule that where the original debtor in a non-negotiable chose in action is sued by an assignee thereof, the defenses, legal and equitable, which he had at the time of the assignment, or at the time when notice of it was given, against the original creditor, applies to all forms of contract not negotiable, and to all defenses which would have been valid between the debtor and the original creditor.

6. Evidence—Presumption.—In the absence of proof, it will not be presumed that a bank, after disclaiming any interest in or right to a judgment on a note which had been assigned to it only as collateral for a debt which was later paid, would attempt to assign the judgment.

Buchanan and Whittle, JJ., dissenting.

SMITH *v.* LURTY.

Nov. 19, 1908.

[62 S. E. 789.]

1. Appeal and Error (§ 1075*)**—Assignment of Error—Abandonment.**—Error assigned in refusing to permit filing of an amended answer is properly abandoned, on plaintiff conceding the sufficiency of the original answer to put in issue the matter sought to be raised by the amendment.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4253; Dec. Dig. § 1075.*]

2. Lost Instruments (§ 8*)**—Establishment—Proof—Essential.**—To establish a lost instrument as a muniment of title, there must be conclusive proof of its former existence, loss, and contents.

[Ed. Note.—For other cases, see Lost Instruments, Cent. Dig. § 17; Dec. Dig. § 8.*]

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.